

No. 1987-1

AN ACT

HB 62

Amending the act of September 20, 1961 (P.L.1541, No.657), entitled, as reenacted and amended, "An act providing for the issuing, administration, enforcement and termination of marketing programs on agricultural commodities; imposing powers and duties on the Secretary of Agriculture; providing for the creation and operation of advisory boards; prescribing the content of programs; and providing for the imposition and collection of fees," changing the name of advisory boards to commodity marketing boards; further providing for powers and duties of said boards; and further providing for powers and duties of the Secretary of Agriculture.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2(4) and (5) of the act of September 20, 1961 (P.L.1541, No.657), known as the Pennsylvania Agricultural Commodities Marketing Act of 1968, reenacted and amended July 16, 1968 (P.L.359, No.179), are amended and the section is amended by adding a clause to read:

Section 2. Definitions.—When used in this act, the following words and phrases shall have the following meanings, unless the context indicates otherwise:

* * *

(4) [**"Advisory board"**] ***"Commodity marketing board" or "board"*** means the persons *who are* appointed by the Secretary of Agriculture [from nominations from the producers of such commodities to assist the secretary in administering a program] *from among producers whose commodities are subject to an issued marketing program.*

(5) **"Marketing [development] program"** means a program, [issued by the Secretary of Agriculture] *established* pursuant to this act, governing the collection of fees and administration of budgets [for the programs] *to implement projects* to benefit producers in Pennsylvania during any specified period or periods.

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(9) **"Marketing contract"** *means a contract or agreement between a commodity marketing board and a person for the performance of services relating to advertising, marketing, promotion, research or other objectives in furtherance of a marketing program.*

Section 2. Section 3(a) of the act is amended to read:

Section 3. Powers and Duties of the Secretary; Marketing Programs.—
(a) **[The Secretary of Agriculture shall administer and enforce the provisions of this act, and shall have and may exercise any or all of the administrative powers conferred upon the head of a department. In order to effectuate this act, the Secretary of Agriculture is hereby authorized to issue, and, only in accordance with the advice and assistance of the advisory board, adminis-**

ter and enforce the provisions of marketing programs.] *Subject to the provisions contained in this act, the secretary shall administer and enforce the provisions of this act, and shall have and shall exercise all administrative powers necessary to effectuate the purposes of this act, including the issuance of marketing programs, the appointment of members to commodity marketing boards as provided in section 4 and the providing of personnel, staff, legal counsel and office facilities required for the administration and enforcement of marketing programs.*

* * *

Section 3. Sections 4, 5 and 7 of the act, amended August 31, 1971 (P.L.425, No.102), are amended to read:

Section 4. **[Advisory] Commodity Marketing Board.**—(a) **[Any marketing program, issued pursuant to this act, shall provide for the establishment of an advisory board to advise and assist the secretary in the administration of the marketing programs. The members of the board shall be appointed by the secretary from nominations submitted by producers of such agricultural commodities as the order will affect, and shall hold office until the expiration of the term established in the program, or until such appointment or term is terminated by majority action of the board. The number of members of any such board and their term of office shall be set forth in the marketing program, and shall be of such number as is necessary to properly administer such program, but shall be a minimum of five.] Every marketing program, issued pursuant to this act, shall provide for the establishment of a commodity marketing board, which shall have primary decisionmaking authority relative to marketing contracts and other projects in furtherance of such program. The number, representation, qualifications and terms of board members and the schedule of regular board meetings and procedure for calling special board meetings shall be established in the issued marketing program. No marketing program shall be issued to establish a commodity board of less than five members, one of whom shall be the secretary, or his designee. The other board members shall be appointed by the secretary from among the agricultural producers whose commodities shall be subject to the marketing program. In making these appointments, the secretary shall consider nominations submitted by the producers. No decision by the board shall be effective unless, pursuant to regular or special meetings, a majority of board members were present and a majority of those present voted in support of the decision. All decisions rendered by the board shall be recorded in written minutes of the meeting, and the recorded minutes shall be made available to the secretary and to the producers whose commodities are subject to the marketing program.**

(b) No member of any such board shall receive a salary, but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized. Any marketing program established under the act may authorize a per diem payment not to exceed **[twenty dollars (\$20)] one hundred dollars (\$100)** per day, and expenses for each day in which a board member or subcommittee member is performing a duty necessary to the function of the board. **[The secretary may authorize such board to employ**

necessary personnel, fix their compensation and terms of employment, and to incur such expenses to be paid by the secretary from moneys collected, as provided in this act, as the secretary may deem necessary and proper, to enable such board to perform its duties as are authorized herein. The duties of any such board shall be administrative only and may include the following:

(1) Subject to the approval of the secretary, to administer such marketing program.

(2) To recommend to the secretary administrative rules and regulations relating to the marketing program.

(3) To receive and report to the secretary complaints or violations of the marketing program.

(4) To recommend to the secretary amendments to the marketing program.

(5) To assist the secretary in assessment of members of the industry in the collection of funds to cover expenses incurred in administration of the agricultural commodity marketing program.

(6) To assist the secretary in collection of such necessary information and data as the secretary may deem necessary to the proper administration of this act.

(c) Upon approval of the secretary, the board may establish committees or subcommittees to carry out assigned duties and functions, and designate the persons who need not be members of the board to serve upon such committees.]

(c) In administering the marketing program the board shall have the following powers and duties:

(1) To determine all matters pertaining to the marketing program issued by the secretary.

(2) To hire and employ personnel which the board deems necessary for the proper administration of the marketing program and to fix the compensation and terms of employment of such personnel: Provided, That the hiring, employment, compensation and terms of employment of personnel pursuant to this clause shall not be subject to the provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(3) To adopt written procedures for acquiring and disposing of property, and, subject to these procedures, to acquire, own, use, hire, lease, operate and dispose of personal property, real property and interests in real property.

(4) To make and enter into all contracts and agreements, in accordance with the provisions of the law, which the board deems necessary or incidental to the furtherance of the marketing program or performance of duties and powers pursuant to this act: Provided, That marketing contracts and the procedures and decisions related to such contracts shall not be subject to competitive bidding requirements of any other statute or other requirements prescribed in "The Administrative Code of 1929." The board shall adopt written procurement procedures for all marketing contracts. Such procedures shall include:

(i) *The method or methods which the board may use to invite proposals for marketing contracts and the manner of notice to be given to prospective contracting parties.*

(ii) *The minimum qualifications of a prospective contracting party necessary for consideration by the board in marketing contracts.*

(iii) *The manner in which a contract offer is accepted and a marketing contract is awarded by the board; notwithstanding any other requirement of this subsection, the board may make sole source procurements when there is only one source for the required service and may make emergency procurements when the board determines in writing that the procedure is necessary due to the urgency of the particular situation.*

(5) *To receive, account for and disburse all moneys collected pursuant to the issued marketing program.*

(6) *To prepare a budget for the administration, operating costs and expenses of the program.*

(7) *To receive and report to the secretary complaints or violations of the marketing program and to assist and cooperate with the secretary in the enforcement thereof.*

(8) *To establish committees or subcommittees to carry out assigned duties and functions, and to designate board members and nonboard members to serve on such committees and subcommittees.*

(9) *To collect and gather information and data relevant to the proper administration of the marketing program.*

(10) *To charge fees and to assist the secretary in the imposition of fees and the collection of fees and revenues pursuant to this act.*

(11) *To issue an annual report on the operation of the program.*

(12) *To recommend amendments to the marketing program and amendments to this act and regulations issued pursuant thereto.*

(d) *No financial obligation shall be incurred by any board beyond the extent to which money shall have been provided under the authority of this act. No obligation or liability of any type incurred by a board created pursuant to this act shall be an obligation or liability of the State, and no board shall have the power to pledge the credit or taxing power of the State nor to make its debts payable out of any moneys except those provided for by this act.*

(e) *Any marketing program issued pursuant to this act specifically for the dairy industry shall provide for the establishment of a board of twenty-one members, who shall include the secretary, or his designee, and twenty persons appointed by the secretary who are active in the production of milk, including, but not limited to, representatives of milk cooperatives and farming associations, producer-handlers of milk and independent dairy farmers. In addition to the powers and duties contained in subsection (c), the commodity marketing board of the dairy promotion program shall have the power to elect or appoint from the membership of the board a chairman, vice chairman, secretary and treasurer and to hold special meetings at the request of the chairman or upon request of one-third of the members of the board.*

Section 5. Provisions of Marketing Programs.—Subject to the legislative restrictions and limitations set forth in this act, any marketing program issued by the secretary pursuant to this act may contain any or all of the following provisions:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets, or to create new or larger markets for agricultural commodities grown or produced in the State of Pennsylvania[. **The secretary is hereby authorized to prepare, issue, administer and enforce plans for promoting the sale of agricultural commodities**]: Provided, That any such plans shall be directed toward increasing the sale of such commodities without reference to any particular firm's or individual's brand or trade name: And provided, That no advertising or sales promotion program shall be issued by the secretary, which shall make use of false or unwarranted claims on behalf of any such product or disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provisions for the establishment of research programs designed to benefit producers, or for agriculture in general.

(3) Provisions establishing or providing authority for establishing an information and service program designed to acquaint producers and other interested persons with quality standards and quality improvements.

(4) Provisions allowing the secretary and the **[advisory] commodity marketing** board to cooperate with any other state or Federal agency, or other organization whose activities may be deemed beneficial to the purpose of this act.

(5) Provision may be made in the program to exempt, or allow suitable adjustments or credits, in connection with an agricultural commodity on which a mandatory checkoff for market development is required under the authority of any Federal law.

Section 7. Terminating Marketing Programs.—**[The] Subject to approval of the appropriate commodity marketing board,** the secretary shall suspend or terminate any marketing program or any provisions of any marketing program whenever he finds that such provisions or program does not tend to effectuate this act within the standards and subject to the limitations and restrictions imposed in this act: Provided, That such suspension or termination shall not be effective until the expiration of the current marketing season. If the secretary finds that the termination of any marketing program is requested, in writing, by more than thirty-three and one third per centum of the affected producers who produce for market more than fifty per centum of the volume of agricultural commodities produced within the designated production area for market, the secretary shall terminate or suspend for a specified period such marketing program or provisions thereof: Provided, That such termination shall be effective only if announced on or before such date as may be specified in such program. If ten per centum of the producers in a commodity group of over two thousand affected producers or fifteen per centum of the producers in a commodity group of less than two thousand affected producers request, in writing, that a referendum be held on the question of terminating the program, the secretary must

announce and conduct such a referendum within a reasonable period of time, and in any case, within one year of the request, a marketing program shall be terminated if so voted by a majority of those voting.

Section 4. The heading and subsections (a) and (b) of section 10 of the act are amended and the section is amended by adding a subsection to read:

Section 10. **[Budgeting and] Collection of Fees.**—(a) **[For the purpose of providing funds to defray the necessary expense incurred by the secretary in the formulation, issuance, administration and enforcement of any marketing program, the secretary shall prepare a necessary budget covering the cost of same. Likewise the board shall prepare a budget for the administration and operation costs and expenses, including advertising and sales promotion, when same is requested in any marketing program executed hereunder, which budget shall be approved by the secretary. Both budgets with the provisions for the collection of such necessary fees, the time and condition of such payment and in no case to exceed five per centum of the gross market value of, such agricultural commodities produced and marketed, shall become a part of any marketing program upon adoption as provided in this act.] Any marketing program issued pursuant to this act shall provide for the collection of fees to defray the necessary expenses incurred in the formation, issuance, administration and enforcement of the marketing program and shall include the amount, time, method and condition of payment. Fees to be charged shall not be in excess of that which will generate revenues of five per centum of the gross market value of production and marketing of the commodity subject to the marketing program.** Each and every producer affected by any marketing program issued pursuant to this act shall pay to the secretary at such time and in such manner as prescribed by the program as adopted **[an assessment covering the budget] the charges** provided by this **[section] subsection.**

(b) For the convenience of making collections of any producers~~], assessments] charges~~ established pursuant to this section, the secretary may collect such **[assessment] charge** from the sales agent of the producer.

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(d) *Each board shall adopt and publish a set of auditing standards, consistent with generally accepted auditing standards, against which the moneys it collects pursuant to this act and expends in accordance with the terms of this act can be audited. Each board shall engage an outside auditing firm to conduct, annually, an audit of its collections and expenditures. An audit under Federal law or regulation may be accepted by the board as long as it meets the minimum standards established hereunder.*

Section 5. Section 11 of the act, amended August 31, 1971 (P.L.425, No.102), is amended to read:

Section 11. Rules and Regulations for Enforcement.—The secretary shall, with the advice of the **[advisory] commodity marketing** board, make and promulgate such rules and regulations as may be necessary to effectuate this act and to enforce the provisions of any marketing program, all of which shall have the force and effect of law. The secretary may institute such action at law or in equity and may establish penalties as may appear necessary to

enforce compliance with this act, or any rule or regulation, or marketing program committed to his administration in addition to any other remedy under this act.

Section 6. This act shall apply to marketing programs existing on this act's effective date upon approval of a majority of members of the advisory boards of such programs.

Section 7. This act shall be effective immediately and may be applicable to marketing programs existing on this act's effective date upon approval of a majority of members of the advisory boards of such programs.

APPROVED—The 6th day of May, A. D. 1987.

ROBERT P. CASEY